Rule 301. Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

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Only the burden of producing evidence is affected by a presumption. A presumption is a procedural device that satisfies the burden of producing evidence. Once the basic facts that give rise to the presumption are established the opponent must produce evidence to rebut the assumed fact or a verdict will be directed on the issue. If sufficient evidence is introduced that would justify a finding of fact contrary to the assumed fact, the presumption is rebutted and has no further function at the trial.

The disappearance of the presumption does not deprive the offered evidence of whatever probative value and whatever effect to which it would otherwise be entitled. For example, it may be that the presumption is rebutted but the underlying facts that give rise to the presumption are sufficiently probative to justify an instruction as to a permissive inference. In approving the federal rule the United States Congress contemplated such instruction. 4 U.S. Code Cong. & Ad. News, 93d Cong., 2d Sess., House Conference Report No. 93-1597, Dec. 14, 1974, p. 7099. 4 U.S. Code Cong. & Ad. News, 93d Cong., 2d Sess., Senate Report No. 93-1277, Oct. 11, 1974, p. 7051. The Court's authority to give such an instruction does not flow from the presumption which has disappeared but from the Court's power and duty to sum up and instruct the jury. Under this rule a jury should never be instructed in terms of presumption. Furthermore, a presumption has no effect on the burden of persuasion.

The rule is largely consistent with the stated practice in Minnesota. Ryan v. Metropolitan Life Ins. Co., 206 Minn. 562, 289 N.W. 557 (1939); Te Poel v. Larson, 236 Minn. 482, 53 N.W.2d 468 (1952). However, the application of the rule has been inconsistent. See Jones v. Peterson, 279 Minn. 241, 246, 156 N.W.2d 733, 736 (1968); Krinke v. Faricy, 304 Minn. 450, 231 N.W.2d 491, 492 (1975); Thompson, Presumptions and the New Rules of Evidence in Minnesota, 2 Wm.Mitchell L.Rev.-(1976).

The rule does not define presumption, leaving this to court or statutory resolution. Because the term presumption has been used loosely in the past to refer to inferences, assumptions and matters of substantive law, the court must determine whether it is dealing with a true procedural presumption. For example, the statement that everyone is presumed to know the law is not based on presumption, but is a mere shorthand statement for the proposition that the substantive law does not recognize ignorance of the law as a permissible defense or excuse. J. Thayer, A Preliminary Treatise on Evidence at the Common Law, p. 335 (1898); Electric Short Line Term. Co. v. City of Minneapolis, 242 Minn. 1, 7, 64 N.W.2d 149, 153 (1954). Similarly, the so called presumption of legitimacy that attaches when a child is born during wedlock is not a true presumption but an operation of the substantive law that allocates the burden of persuasion in a litigation.

The rule applies to both common law presumptions and statutory presumptions with the exception of those statutory presumptions in which the legislature has specifically provided that the presumption shall have some other effect. See Minnesota Statutes 1974, section 602.04. The rule applies only in civil actions and proceedings.